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CONFLICT IN TESTIMONIES

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ABSTRACT

Evidence and testimony are among the most widely used reasons to prove oneself in a quarrel. It is possible that in an argument different reasons would be in contrast with each other. In this case, one evidence or reason rejects another one. The judiciary and testimonies chapters are those which are in direct association with human community and people are always in need of these of hers in the community and the judge cannot make a right decision in the court without any evidence or testimonies, therefore there is a requirement of explaining the issues and various provisions based on laws. In this article, we will scrutinize how the conflict occurs between reasons, and how these conflicts can be eradicated and which reason is prior than the other one and so forth. Besides, the idea of the jurisprudence scholars and the law experts will be analyzed and this fact that why such argument wasn't paid too much tribute in law will also be taken into account.

Keywords: *Evidence, Testimony, Conflict, Reasons.*

INTRODUCTION

Conflict in testimonies is formed with the realization of contention in testimonies. This is the most contentious issue in jurisprudence and law. In law the reason which is dependent on evidence appears very important and if testimony bears the religious and lawful validation, it is reliable and influential and the credibility of such testimony is in such an extent that it can solely be used as a reason of the confirmation of the crime and acceptable. In other words, in other words, testimony by itself would be used against the convicted as a reason of confirming the guilt in the religious law is its accuracy is flawless and occurs according to the sharia law. Thus, in cases that the witnesses or the case that should be witnessed are in contrast with each other, and the fact that which one is acceptable or refuted seems very important. As a result, the importance of opening a discussion about this issue and finding a legal and religious solution will be taken into consideration.

EVIDENCE

The literal meaning of evidence (Bayeneh)

The word " Bayeneh" and the plural form " Bayenat" in Arabic which is also used in Persian language means; reason or deduction, or means the evidence or proving something directly (Bostani, 1996, 200).

Idiomatic meaning of evidence (Bayeneh)

According to jurisprudence scholars Bayeneh or evidence is a clear argument either for the witnesses or the witness or taking an oath and everything which proves something right (Abu-Jib, 1998, 47).

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In Koran the term evidence and its derivations are used both in nominal and adjectival forms (for the adjectival form refer to Baqarah Soureh (chapter), verse 211; and Al-Emran Soureh (chapter), verse 97 and four nominal examples refer to Baqarah chapter, verse 209; and An'am chapter, verse 157). This term is the feminine gender of the word "Bayen", means: "clear and evident" and it is a ward for analogy originated from its roots "Ban", "yabayen" and "Bayana" that means "became clear and evident". The word "Bayeneh" has been used in Koran but it has nothing to do with the jurisprudence expression; although, sentence testimony of two just men and other versions of testimonies have been mentioned in Koran. This word has been used in Koran in its very literal meaning and mostly in accounting the miracles of the prophets (Baqareh chapter: verse: 87, 92; An'am chapter, verse5757 wall for instance 57; Araf chapter, verse 73). For instance, the Moses (peace be upon him) miracles are considered as a reason and argument (stories 32). Tabarsi in " Majma-al- Bayan, (compound statements)" interpreted this word in varieties of ways such as, the implication of separating righteousness from vain (Tabarsi, 309, 439:2), clear proof (the same book, 387:2), miracle (the same book, 170:3) and argument (the same book, 155:3).

WITNESS

The literal meaning of a witness

The word "witness" are defined denotationally as follows: witness means the decisive news about an affair (Abu Habib, 1988). Also, in its literal meaning it is mentioned as: witness as a word means the presence, examination and giving notification (Jafar Langeroudi, 1997) and he writes somewhere else as: witness comes from the observation which indicates getting information from something visually (Jafar Langeroudi, 1997).

Connotation old meaning of witness

law experts and jurists have defined witness in this way that: witness means an accurate news from the occurrenc of an affair in order to proving it in the court (Goldoozian, 1998).

Dr. Langroodi writes: "traditionally witness means the use given by one or several people about the occurrence or the existence of a concrete affair in the past or present in a way that the mentioned news wouldn't bring any harm to the bearer (Jafar Langeroodi, 1997).

Therefore, the idiomatic meaning of witness say that witness means revealing the information that a person himself observed directly from the scene all incident and by directly we mean that the testimony of a witness is acceptable provided that the one himself or herself observed the occurrence of an incident directly. The article 1320 from the civil code provided that: " The testimony will be heard under the condition that the original witness is died or because of another obstacle such as illness, traveling, or imprisonment cannot attend to the court. Therefore, by stating this it will become evident that accepting the testimony with a mediator is possible when the origin of the testimony is clear and because of the reasons that are out of his or her control cannot attend the court.

According to the article 174 of the Islamic panel code ratified in 21/4/2013," testimony includes personal news other than the parties of the occurrence or not the occurrence of the crime by the accused person or any other affairs by the judicial authorities." Also in accordance with the article 157 of the aforementioned law: "the traditional or religious testimony is something that Legislator considers it credible and with authority, whether or not it is useful for the science."

Of course, based on the article 176 of Islamic panel code: "if the witness is not legally and religiously qualified, his acknowledgments will be listened. The recognition of the amount of its impact and value is bound to the Judge's knowledge of judicial jurisdiction in the court." The word testimony in jurisprudence, is the announcement and news of something that the delator has knowledge about it, whether this knowledge is obtained through perceptions or something else (Golpayegani, 1984). The first Martyr stated in a book named, Masalek that: testimony in its literal meaning refers to the certainty of the news and in religion is refers to informing of a constant right for somebody, if the informer is not a judge or a ruler, because in this case it will be considered as a sentence but not a testimony. He continues that, with this constraint, the news from the Almighty and his prophet and imams (AS) are included in this definition and considered a testimony. It is also the same when a ruler notifies another ruler since in this case the mode is not composing a sentence.

The author of " jurisprudential titles" considers the word testimony is having the same definition both literally and practically and states: "testimony in news manifests from the knowledge about an affair belongs to others". Therefore, the confession of a person gains himself can also be considered as a testimony, since the news is based on the knowledge. (Maraqei, 1996).

The author of Jawaher, citing from this verse of Koran: " Some of you observed the months" interpreted the word testimony as an attendance and considered its expressional or metaphorical meaning the same as the definition of The First Martyr. However, he acknowledges in the conclusion that: regarding that the reference of the definition of testimony returns to its conventional meaning, so the most desirable act is that we leave it to its conventional meaning because it is not clear if it has a particular religious meaning (Najafi, 1981).

Some of the latecomers criticized the definition presented in Masalek and Jawaher about testimony and stated: the appearance shows there is no religious or post- religious reality for the afore-mention metaphorical meaning. However, testimony was used in a meaning different from those (Rouhani 1993).

THE APPLICATION OF EVIDENCE IN JURISPRUDENCE

In jurisprudence sources evidence mostly came in chapters about "judiciary and the testimony, but there is no clear definition about it. Some of the jurists regarded evidence as something which determines and illuminates right (Ibn Qayem juzieh: 24, 12), and on the basis of this, they considered the meaning of jurisprudence and evidence as an equivalent to giving reason or logic (Ibn Qayem, the same), which is actually it's denotation meaning. At times, according to the previous jurists, instead of evidence the word Hojjat is used (Allameh Helli, 1936). Based on this theory of evidence in jurisprudence, it was used in its denotation or literal meaning and there is no expressional or metaphorical meaning for that. However, we can find out from the applications of this term in jurisprudence texts that the concept of evidence is not such a thing that was used, but it is testimony that their religion regards it as an evidence and credible to prove its claim. As it was said by Ibn Qodameh: "testimony was called evidence in a way that it elucidates the righteousness and eradicates conflicts." (Ibn Qodameh).

In traditional sayings (Hadith) the subjects of evidence is judiciary and the testimony. Evidence often is used in its expressional meaning (Hor Ameli, 187-167:18). Even as mentioned by Raqeb Isfahani (under "reason") the popularity of evidence to be used in this expression and its application about testimony is a very famous prophetic Hadith: "the burden of the proof on the

plaintiff is to prove something he denies", as the origin of credibility and authority of evidence comes from the idiomatic meeting of this hadith. This transition or hadith cited in narrative community of Shia and Sunni – is acceptable by all jurists and it is put in the stance of frequent hadiths (Bojnourdi, 1981). According to the popular idea, by evidence in this hadith it is meant 2 witness men, as is specified in another Hadith from the same Majesty (Hazrami and Kandi Hadith) (Sarakhsi, 1983). Based on this Hadith and other Hadiths (Hor Amelli, 1983), companies of that by the meaning of evidence in Hadiths and the words companions and successors the same jurisprudence expression is meant. In contrast, some others believe that evidence in these cases has been used in its literal meaning and its correspondence on particular cases is not an indication of deviation from its literal meaning, although this kind of correspondence to particular cases are a lot. In addition, cases as testimony of two men or one man and two women are instances of that concept but not the construction of a new expression (Ibn Qayem, the same). Accordingly, these people do not believe in the existence of a specific jurisprudence expression for evidence.

Evidence is mostly used in judicial affairs and to conclude the adversarial struggles or proving a crime. Two famous prophetic anecdotes considered as important documents of authority and evidence, are entered in the judiciary affair (as we authorize among you by evidence and faith- Burden of proof on the plaintiff and the defendant's right on this.). However, the rule of authority of evidence is applicable across all chapters of jurisprudence, such as purity and impurity, Qiblah and prayer time, clean clothes for worshipers, justice of the priest and the congregation prayer imam as well as judge and witness and other issues such as khums, Zakat, Hajj, transactions, marriage and divorce, fishing and slaughtering animals for food and drinking, seeing the crescent of the moon and other issues like heritage, will and penance by Islamic law (Bojnourdi, 1981). Practicing based on evidence in other issues rather than pleading is not confined to the sentence of judge, however in pleading or arguments between the two parties two theories are expressed (Ashtiani, 1948).

After referring to the expressional meaning and the legislator of evidence, these two questions rises that whether or not evidence in Islam is the reality of two witnesses? Whether or not this is the absolute meaning of the reason that it is necessary for the defendant to prove his claim in the court?

Without a doubt, in jurisprudence sources evidence comes along with taking an oath- which is mostly for halting the argument-that is considered as the most important instrument for judgment and the appearance of this prophetic hadith which says," people should judge between you with reasons and faith"that is the evidence for this statement. And based on a quotation, it is exclusively limited on these two. Therefore, in different situations the kind and the number of them differs. Saying something bounded to evidence is also originated from this interpretation and added some other cases to that. So, there is no doubt in jurisprudence and Islamic authorities in the credibility of its origin and the Shi'ite and Sunni scholars are in accord with each other. As far as it goes, there is disagreement among jurists to determine the application of evidence. There are some who consider the equality between evidence and the testimony of two just people and other groups consider a general and absolute meaning for evidence. The latter group are the regarding evidence as something manifested in testimony, whether in absolute obedience or in terms of religious or traditional quotes of the term "evidence" by the witness of two fair people, while they accept its absolute credibility. Alongside of these quotations it can be referred to the

quotation which raises the evidence as an absolute reason (any reasons that has the status of being prove). To continue our discussion, we will scrutinize the foundation of these two quotations (allocation or non-allocation of evidence to the testimony of two men).

CONDITIONS OF ACCEPTING TESTIMONY

To accept the testimony of two witnesses, it is necessary that both of them witness on one thing and without any difference. Therefore, if they witness like this the ruler can sentence based on those requirements and the rate of their unification in words of both is the unity of the concepts but not the words themselves. If one of the two witness states that this person has usurped the property of someone and another witness says that I saw that he robbed the property by force, or one of them says I witness that he sold this property and another says that in return of something he gay the possession of a property to him, their testimony is acceptable. But if their discourses are conceptually different, their testimony is not acceptable. Therefore, the, if one of them witnesses that I saw he sold and another witnesses that I heard that someone sold his property is not acceptable, and also if someone witnesses that one person confiscated the property from Zeid and then another says this land is Zeid's, this is not acceptable. Because they don't testimony about this statement and the words of someone who said it was confiscated doesn't mean that the property was Zeid's, because it might not be for Zeid and he was safekeeping it and instead usurped it (Imam Khomeini, 2, 471- 475).

DIFFERENT KINDS OF EVIDENCE

Evidence has different names in jurisprudence books in terms of its applications that some of the most important of those names are as follows:
internal evidence (the witnesses that are presented to prove the possessiveness of a person who has the dominance on the property), external evidence (the witness that is presented on behalf of the plaintiff against the dominant possessor) the original evidence (the witness proves the origin of the argument by relying on his knowledge) peripheral evidence (is a kind of witness that testimony based on the other peoples'testimony and it is used if the original evidence is not accessible), the wrap-up evidence (is a kind of witness that testimonies in the presence of the second the judge about the judgment of the first judge for the claimant and the denial) and the calculated evidence (the witness who testimonies from the ordering for the good and forbidding for the prohibited act point of view about an affair), descriptive evidence (the witness who testimonies in order to recognizing the identification of somebody), evidence of injury and evidence of modification (the witness who testimonies to confirm or refute the fairness of the witness), confirmatory evidence (is a kind of witness that testimonies on the occurrence of something), and denial evidence (the witness that testimonies on the failure of the occurrence of an affair). (Jafar Langeroudi, 1984).

CONFLICT

The literal meaning of conflict

Thumbs Down – objection (width): something that is located in the width is like a wide timber that can ban the water of the stream. As this Arabic statement puts in: عليه من قولِ أوْ فعلٍ which means: he was attributed to errors and wrongdoing – له: he was prohibited – دون الشيء, he

prevented something – سَبِيلَهُ, he blocked the way on him (Sayah, 2008). Discrepancy-contradicting (width) - those two men contradicted with each other and stood against each other (Sayah, 2008), he stood out, resisted, violated, rejected. Contradiction: Disagreed, collided (Sayah, Ahmad, 2008).

expressional meaning of contradiction (Ta'aroz)

The word (Ta'aroz) or contradiction is originated from "Araz" which means expose an object to the sight of others. In its expressional meaning Ta'aroz (contradiction) the same principle has been considered, and on account of the fact that each of the two reasons shows its contradictor the reality and prevent to show the other, and this is called contradiction (ta'aroz). The word " ta'aroz" comes from the infinitive which is on the chapter or Bab of " Tafaol" in Arabic and this Bab is for partnership. Therefore, we should have two partners, that is, they should be two reasons and each of which will be in contradiction with each other. That is why, it will be said the contradiction of both reasons. However, as far as the expressional meaning is concerned, this word means: the contradiction or opposition of two credible reasons or their referent (Malaki Esfahani, 2000).

In other words: contradiction (Ta'aroz) means confutation of two credible reasons of each other, in a way that the truth of both is impossible. Of course, other provisions mentioned to define "Ta'aroz" (contradiction) that as far as these provisions were used as the requisite of "Ta'aroz" (contradiction) we will prevent to talk about them in the definition.

In another definition, any time two or more reasons are against each other, in a way that they cannot be collected together, it is called contradiction or " Ta'aroz" and those two reasons are called "discordant" (Valaie, 2008). This is when each of the two reasons denies the other one and seals on it as an invalid one, that is, one reason says the other one is false and doesn't meet the criteria and it is not issued from an authorized source. In contrast, another reason also says that the other one is false and doesn't meet the criteria and the contradiction between them is in a way that it causes confusion for the one who wants to collect them in practice and they cannot be put together at all. Ta'aroz (contradiction) has 7 requisite which all of them came in section (Sh), the part that is allocated to contradiction (Qolizadeh, 2000). That is, this concept (referent) one or two literal reason – like two anecdotes – are contradictory; in this meaning that the concept of each is the disavowal of the referrer and the concept of another, in a way that the common law doesn't consider the collection of them in the first sight (Mohaqeq Naeni, 1998; Naini, Mohammed Hussein, 1996). For instance, there are two reasons which are put in for the Friday congregation prayer which one of those two states that: "the Friday congregation prayer is imperative "and another reason states that: "the Friday congregation prayer is not imperative". To resolve this contradiction in the discussion of equilibrium and the preference in the science of principles, there are several rules and insights which have been put forth and it should be referred to that. It is affable that, the contradiction and disavowal between the two reasons are having some conditions; as though, each of the literal meaning is considered certain and valid, otherwise the contradiction has no meaning (Mozafar, 1989). In order to occure contradiction between the two reasons of proving the argument, there should be some conditions: existence of at least two reasons, which are disavowal and denial of each other and the unity of the topic and the contention of each argument. As an example, suppose that one person claims he is a creditor from another one by citing a written reason. This person accepts the issuing of written reasons from himself and the claims to pay his debt through citing to the witness. In this example there

is no real contradiction between the two reasons because the topic of the mentioned reasons are different, the topic of claiming this credit and the topic of paying the debt.

The contradiction of testimony in jurisprudence

when two reasons are raised, one for a financial affair and the other for something else and these two reasons are contradictory and collecting the two to remove the contradiction is impossible, contradiction or ta'aroz took place. The particular form of contradiction (Ta'aroz) is that one reason is put forth to disavow something that another reason is also present to prove it or vice versa. Allameh Helli called it confutation (The Rules of commandment, 2: 233). The appearance of the statement of jurisprudence refers to this fact that based on the opinion of Hanabaleh the contradiction between two reasons is called to the same false ideas (Abuhabib, 1982). However, if the contradiction refers to the conflict and equilibrium, some of the Imamian jurists decreed to some conflict reasons. Still there are others who are thinking of the abandonment and others believe that these two conflicts are tumbled down each other from being authorized. Shofei adjudicated to the conflict saying and in Abuhanifeh's opinion the preference is given to one of these two reasons (Tabatabai Yazdi, 1999; Tousi, 1998). If the contradiction of two reasons is about a property, while this property is occupied by one of the two parties the internal and external reasoning will be raised (Toosi, 1998). The jurists of Imami and the imams of other four sects of Islam have given different decrees. Some of them are exclusively assigned to offering internal reasonings and others prioritized the external reasoning. Some of the Imami jurists raised the evaluation of the preferences in both reasoning, however the most common ideas among jurists is the expression of the differences between stating the cause of the property or not to stating the cause. In a way that the opposed property is occupied by both parties, most of the Imami jurists such as Ahmad Ibn Hanbal, Shafei and Abu Hanifeh assigned to share the property between the parties and some Shieh jurists and Malek decreed to analyze the preferences (Tabatabai Yazdi, 1999). If neither of the parties are occupying the property which is under the argument, the common decree of the imami jurists is the preference of one of the reason as long as the number of the witnesses and their fairness are concerned and in case of the equality in any way, the sentence will be issued based on the grace. The jurists of four Islamic sects except Malek established that the preference is not authorized. However, giving decree to prefer the grace has just been attributed to Shafei (Toosi, 1998). The contradiction between two reasons has also got other adjuncts mentioned in jurisprudence books comprehensively. If one of the two witnesses' testimonies on something and the other on something else, in case of denying each other's testimonies both of them will be tumbled and there is no place for taking an oath anymore. If both do not deny each other, the plaintiff will add a swear for each witness then his claim and will be proven. Some stated that in each other's face also, if the plaintiff will take an oath based on the words of one of the witness, again it is proven, albeit something we said is more correct (Imam Khomeini, 2: 471 – 475).

If one of the witnesses' testimonies that Zeid has stolen a property to the extent of quorum (the property that its price is one-fourth of Dinar) from somebody and another witness testimonies that I saw at the beginning of the night that Zeid had stolen a property which has certain value from somebody, by these testimonies the hands of Zeid wont be amputated he won't be accused of returning the property. The same thing will happen if the second witness says exactly the same thing like, I saw the property was stolen in that night. (Imam Khomeini, the same).

If two witnesses' testimony about an action confederatly and without any conflict, but there is a difference at the time or place of its occurrence and of the actions of properties, in a way that these variations make the characteristics of both verbs and actions separate, there witnesses are not complete. For instance, if one of them says Zeid robbed clothes in the market and the other says I saw about the robbery occurred at night, then in such witnesses the hand of the robber won't be amputated and Zeid wont be accused of paying one dinar, unless the plaintiff of the witness takes an oath. In this case, the rubber owes all that money (because the witnesses won't tumble down, since they don't have conflicts with each other, and they might be stolen from the market or from the house plus other examples). However, if the witnesses are in conflict with each other, like a person who says I saw that Zeid had stolen this clothes in Najaf on Friday from that person and another says that he stole this clothes in Baghdad today's noon. Such witnesses are tumbled down because of the conflicts and nothing will be proven by them, not amputating the hands of the thief, and do not the damages (Imam Khomeini, 2: 471 – 475.

If one of the two witnesses' testimony that this man had a stolen this clothes in the early hours of noon in this very today to such a person for one dinar and the second person witness that the same clothes have been sold to him in the early hours of noon for two dinars, this kind of witness are also having conflict with each other and each of them will tumble down the other one. Of course, some of the jurists said that here the plaintiff is optional in this fact that by enclosing oath choose one of the two payment. However, this saying is weak. And if for each of those witnesses another witness gives testimony to say in the result of both witnesses that the clothes were sold in one dinar and the two other witnesses say that it was sold in two dinars, some say that in this situation two dinars is proven. However, this is more similar to tumbling down of the reasons. In addition, it is the same when a witness says I heard from a debtor who confessed I owe somebody 1000 dinars and another witness says today's morning I heard the confession of 2000 dinars from him. Here, because the date of the confession of both is the same both contradictions will be tumbled down. Some said 1000 dinar (in any way is the agreement of both witness) is proven and if the plaintiff takes an oath based on the witness of the second person, another 1000 dinar will also be proven but this saying is weak. Therefore, the regulation of this issue is that wherein there is a conflict both parties of contradictors tumble down, whether it is a reason or at testimony. In addition, anywhere that there is no conflict this issue will be proved whether by a reason or a witness along with the oath of the plaintiff (imam Khomeini, the same).

Tabarsi sentenced to the conflict of the reasons while neither of them is prior than the other it will be sentenced by a lottery and then taking an oath, that it's a statement is manifested in this discussion (Tabarsi, 1954). Ibn Jonayd also sentenced to take an oath if the witnesses of both parties are equal. In a way that, if both people have taken an oath or both of them refused to take an oath, he sentenced to share the property that they are conflicting on. However, if the reasons are not equal, it will be sentenced to do the lottery, that in this case each one's name came out of the draw should take an oath and if he rejected from taking an oath, and other persons should take it (Ibn Jonayd, 1995, 317 and 318). Mr. Mofid prioritized more just witnesses and in the case of the equality of all just witnesses, the sentence will be given to share the disputed object (Mofid, 1992, 730).

After talking about the opinions of the jurists in this part, the reasons of those opinions should be analyzed now. The reasons of common quotations of the jurisprudence experts are the

traditional saying or hadith in which the lottery between the two parties is sentenced. These hadiths are general and will include all cases of the problem. To solve the conflict of the witness in this case, the allocation of these groups of hadiths in the third version should be scrutinized.
In addition to considered hadiths in the first and second versions, we have other groups of hadiths in which the lottery between the parties are decreed. These anecdotes, are the accurate hadiths from Abdullah Ibn Sanan (Amelie, 1988, 27, 255), Basari (Amelie, 1988, 27, 251), David (Amelie, 1988, 27, 251) and Hamad (Hor Amelie, 1988, 27, 254) and the reliable hadith of Samaeh (Amelie, 1988, 27, 254) from imam Sadeq (AS).
These traditional anecdotes include all versions of the problem. It seems that to collect all the hadiths related to the agenda, the best opinion is that these hadiths be allocated in this way it, because we have some traditional anecdotes (Amelie, 1988, 27, 251) that decreed on sharing or dividing the property which there is a conflict on. On the other hand, we have other hadiths (Amelie, 1988, 27, 254) that their implication is offering witnesses excluded from the conflict without drawing and referring to authorities in the second case. Then, almost all of the hadiths in which the drawing or lottery are decreed are fallen down with these two groups of traditional anecdotes and become part of the group 3 of hadiths. These hadiths imply on the lottery or drawing between the two parties in case the number of the witnesses are equal as far as the numbers and fairness are concerned. Therefore, if the number of the witnesses in one party is prior than the other party numerically and Justly, is witness is prior than the other party on the lottery would be dominant the case that both parties would be the same as far as the justice and numbers are concerned.
From some of these hadiths, like these accurate hadiths from Zarareh (Hor Amelie, 1988, 27, 252) and Basari (Amelie, 1988, 27, 251) from imam Sadeq (AS) are obtained for each of the parties of the conflict that their names came out by a draw should take an oath including one of the requisite that came at the end of Basari hadith (Amelie, 1988, 27, 251) that imam stated: the disputed property will be given to the one who has taken an oath by a lottery and if he has taken an oath. Also it has been found out that if somebody's name has been drown up in the lottery but he refuse to take an oath, the disputed object won't be given to him. As long as the rights of the possession of the disputed property is allocated to these two people, if we give the disputed property to another party without taking an oath, it is incompatible with the famous hadith of the prophet (PBUH), because in that hadith he states that I will decree just through reasons or taking an oath (Amelie, 1988, 27, 232). So, swearing will be returned to another party and if he takes an oath the property will be given to him and above all, from the two accurate anecdotes of Basari and Zarareh we can found out that when the witnesses of one party is prioritized as far as the numbers and justice are concerned, the prior party should again take an oath, because the hadith says that if the witnesses of one party is equal to another party as far as the number and justice are concerned, in older to identify the first person who should take an oath the draw will be casted, but if the both parties are not equal and the number and justice of one party is prior than the other one, the one whose witnesses are higher should take an oath and if he rejects to take an oath another person takes an oath and the property will be given to him.

The contradiction of testimony in Law

testimony is one of the reasons of proving a lawsuit. Hearing the testimony is came both in our civil law and in code of civil procedure, but neither of them didn't give any definitions about that. According to Dr. Mohsen Sadrzadeh Afshar, testimony is the acknowledgment of people

outside the lawsuit who had observed the disputed case or heard about it personally and being informed about anything happened (Afshar, 1990). In the definition offered by Dr. Catoozian that: "testimony is the news of any incidents which is in favor of one of the two parties and a loss of the other that is stated from the third person who is not part of the lawsuit or the judiciary team at the time of differentiating the right from wrong" (Katoozian, 2004). Our legislator dealt with testimony as one of the reasons to prove the lawsuit in civil law and the code of civil procedures. In the code of civil procedures mostly paid attention to the procedure of investigating from the witnesses handle the cases of injuries as well as the way of testifying and in the civil mostly paid attention to the cases of testimonies and it's a situation as well as the witness's characteristics.

Before modifying the laws, the value and the credit of testimony was nuance in the legislators' eyes; because the witnesses may be bribed, intimidated, mistaken, or oblivion and testify against the reality. That's why the city law had restricted the testimony in different aspects: firstly, in articles 1306 and 1307 at limit has been considered for the issue of proof, in a way that beyond that limit couldn't be proven just by testimony. Secondly, in contradiction between the document and testimony, in article 1309 the document had been prioritized. Thirdly, it didn't accept the testimony of any kind of people and in article 1313 there has been some conditions for the witnesses and the testimony wasn't accepted from unauthorized people. However, in the amendments after the revolution, the articles 1306 and 1307 from the civil law has been automated in the Guardian Council has also considered the article 1309 contrary to Islamic standards and annulled it in order that the importance of testimony would be illuminated more than ever (Katoozian, 2004).

CONCLUSION

The issue under discussion is the contradiction of witnesses. This issue is not mentioned in our law and law scholars never dealt with it naturally. While the jurisprudence experts were dealing with it from long time ago and studied it in different alternatives comprehensively. Maybe one of the reasons of not dealing with this in our law was that the jurisprudence experts were dealing with this issue comprehensively, since the dominant reason of proving the lawsuit in the past was testimony and it was given more value and credit. In any reason, testimony is religiously and judicially justified, that's why the importance of testimony was clearly identified after the revolution and the amendments of the Statute book based on the Islamic standards and omission of mentioned articles. Particularly by our meeting article 1309 of the civil law, the importance of the issue of contradiction in testimonies was raised more than ever. In jurisprudence if both parties of the lawsuit have the dominance of possessiveness about the disputed property, then in this case, the sentence will be given free from referring to the number on justice of witnesses, drawing and taking an oath, to share the property in half and one party is having the possessive dominance on the property and the other is excluded, in this case the witnesses away from the conflict are prioritized and without referring to preferences and swear the property will be given to him. Also we identified that the cause of ownership is not the reason to prepare the witnesses who had mentioned it and there is no reasons to imply the priority of that in traditional sayings (Hadiths). However, in the third and fourth version of the issue, that is, when the property is a way from the hand of the two parties of lawsuit and possessed by the third person or nobody is possessing it, in this case if the witnesses of one party are prior to the other party as far as the

number or the fairness are concerned, he will take an oath and the property will be given to him. If the witnesses are equal from these aspects, it will be ruled to draw and anybody's name came out of the draw should take an oath and the disputed property will be given to him. And if the party was a witnesses where prior as far as the number and fairness are concerned, or the person whose name has been drawn refuse to take an oath, this right will be given to the other party and if he had taken an oath, the property will be given to him. If he also refused to take an oath, then it will be sentenced to share the disputed property in half between the parties.

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